

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DANIEL CARTER,

Plaintiff,

vs.

C/O JIM KING, SGT. CHARLES  
ANDERSON and C/O RUSSELL P.  
MICHAEL,

Defendants.

NO. CV-06-5056-EFS

**ORDER DISMISSING FIRST AMENDED  
COMPLAINT WITH PREJUDICE**

**28 U.S.C. § 1915(g) DISMISSAL**

BEFORE THE COURT, is Plaintiff's First Amended Complaint (Ct. Rec. 10). Plaintiff, a prisoner at the Washington State Penitentiary, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. Plaintiff seeks injunctive and declaratory relief, as well as monetary damages, for alleged violations of his right to practice his religion under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, *et. seq.*

Plaintiff complains Defendants King and Anderson disrupted his prayers in the "Big Yard" on August 21, 2005, and ordered Plaintiff to return to his cell. Plaintiff claims Defendant Michael then wrote a disciplinary infraction against Plaintiff regarding this incident, but admits the disciplinary proceedings ended in a finding of "not guilty."

1 As presented, Plaintiff's allegations fail to state a claim upon which  
2 relief may be granted.

3 Section 3 of RLUIPA prohibits governments from enacting  
4 regulations, including rules of general applicability, or otherwise  
5 taking actions that impose a "substantial burden on the religious  
6 exercise of a person residing in or confined to an institution," unless  
7 the government demonstrates that imposition of that burden furthers "a  
8 compelling governmental interest" by "the least restrictive means." §  
9 2000cc-1(a)(1)-(2). The Court assumes, as Plaintiff alleges, that  
10 prayer is a fundamental practice of his religion. Nevertheless,  
11 Plaintiff has presented only a single, isolated incident in which named  
12 Defendants acted contrary to prison policies and interfered with his  
13 prayers. He has not alleged a substantial burden on his religious  
14 exercise by the government.

15 At worst, Plaintiff has demonstrated a de minimus interference with  
16 his religious practice by individuals, which was subsequently remedied  
17 within the institution. Liberally construing these allegations in the  
18 light most favorable to Plaintiff, he has failed to allege facts from  
19 which the Court could infer his religious freedom was substantially  
20 burdened in violation of RLUIPA.

21 Again, Plaintiff admits the disciplinary actions taken against him  
22 resulted in a finding of "not guilty." An inmate has no  
23 constitutionally guaranteed protection from being wrongly accused of  
24 conduct; rather, he has a constitutional right not to be deprived of a  
25 protected liberty interest without due process. *See Freeman v. Rideout*,  
26 808 F.2d 949, 951 (2d Cir. 1986), *cert. denied*, 485 U.S. 982 (1988).  
27

1 Here, based on the facts presented by Plaintiff, due process was  
2 satisfied by the "not guilty" finding. "Some Administrative actions  
3 will inevitably make prisoners feel cheated; nevertheless, this does not  
4 give them a federal cause of action." *Grayson v. Rison*, 945 F.2d 1064,  
5 1067 (9th Cir. 1991).

6 In the previous Order to Amend or Voluntarily Dismiss, the Court  
7 cautioned Plaintiff if he chose to amend his complaint and the Court  
8 found the amended complaint was frivolous, malicious, or failed to state  
9 a claim, the amended complaint would be dismissed pursuant to 28 U.S.C.  
10 §§ 1915A(b)(1) and 1915(e)(2). The Court has found Plaintiff's First  
11 Amended Complaint fails to state a cognizable claim under 42 U.S.C. §  
12 2000cc, et. seq. Accordingly, **IT IS ORDERED** the First Amended Complaint  
13 is DISMISSED with prejudice.

14 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner  
15 who brings three or more civil actions or appeals which are dismissed as  
16 frivolous or for failure to state a claim will be precluded from  
17 bringing any other civil action or appeal *in forma pauperis* "unless the  
18 prisoner is under imminent danger of serious physical injury." 28  
19 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory**  
20 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's**  
21 **complaint may count as one of the three dismissals allowed by 28 U.S.C.**  
22 **§ 1915(g) and may adversely affect his ability to file future claims.**

23 **IT IS SO ORDERED.** The District Court Executive is directed to  
24 enter this Order, forward a copy to Plaintiff at his last known address,  
25 enter judgment, and close the file. The District Court Executive is  
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1  
2 further directed to forward a copy of this Order to the Office of the  
3 Attorney General of Washington, Criminal Justice Division.

4 **DATED** this 16th day of November 2006.

5  
6 S/ Edward F. Shea

EDWARD F. SHEA  
UNITED STATES DISTRICT JUDGE